



Guidelines for Grant Funded Construction Projects Non-DEQ Regulated

These guidelines are for DNRC grant funded design and construction projects that are not regulated by the Montana DEQ. Projects of this nature may include irrigation, nonpoint source reduction, certain stormwater projects and reclamation/restoration projects.

Procurement

DNRC grant agreements require that the recipients meet appropriate procurement laws which govern how local governments must advertise for and award engineering contracts, construction contracts and purchase of materials. The source of grant funds, federal or state, designate the most stringent procurement requirements. Local governments are also subject to their local procurement laws, rules, or guidance. Please consult your legal counsel regarding procurement standards to hire an engineer, purchase goods or services and bid construction projects.

The references provided below are Federal or State of Montana requirements; generally, county, municipalities and other local governments may have similar requirements.

Federal: Recipients are responsible for ensuring that any procurement using federal (e.g. ARPA, EPA or NRCS) funds, or payments under procurement contracts using such funds, are consistent with the procurement standards set forth in the Uniform Guidance at [2 CFR 200.317 - 2 CFR 200.327](#).

State: Recipients are responsible for ensuring that any procurement using state funds, or payments under procurement contracts using such funds, are consistent with procurement standards set forth under the Montana Procurement Act ([MCA Title 18, Chapter 4](#)) and State of Montana Procurement of Services ([MCA Title 18, Chapter 8](#)).

Projects cannot be broken into smaller projects to avoid regulations regarding advertising and receiving bids for (MCA 18-4-305).

Engineering

The State of Montana requires that projects must be designed and inspected during construction by a Montana registered engineer and all land surveying projects must be performed by a Montana registered land surveyor Montana Code Annotated ([MCA](#)) 18-2-121.

The Midwest Assistance Program (MAP) guide for “[How to Hire an Engineer](#)” is available on DNRC’s website.

Federal: Request for Proposals (RFP) [2 CFR 200.320\(b\)\(2\)](#) A procurement method in which a fixed price contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids.

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State: Request for Qualifications (RFQ) [MCA 18-8-2](#) Procedures for the procurement of licensed Engineers, surveyors and architects..

MEPA and Permits

DNRC is required to ensure that the project complies with the Montana Environmental Policy Act (MEPA) and as a condition of grant agreements, will not authorize the local government to advertise for bids until the appropriate MEPA decision is finalized. Reimbursements will be declined for activities not approved under the MEPA decision notice.

The local government is responsible to obtain all permits, licenses, or authorizations prior to initiation of the project or required to be obtained by the time of completion of the project to be eligible for reimbursement funds from DNRC.

Permits or authorizations may include but are not limited to:

- ✓ Beneficial Water Use Permits (§85-2-302(1), MCA), Change in Appropriation Right Authorization (§85-2-402(1)(a), MCA) or other requirement under the Montana Water Use Act; ([DNRC](#))
- ✓ [Sage Grouse Habitat](#) (Executive Order 21-2015),
- ✓ 310 or other waterway and floodplain [permitting requirements](#),
- ✓ other permits or authorizations that may be required by state, local, or federal agencies prior to beginning work on the project or prior to completion of the project.

Construction Bidding

Plans, specifications, and a construction cost estimate are required for bidding construction projects. Once drafted, bid documents may need to be reviewed and approved by the DNRC before advertising for construction contracting or materials procurement. For infrastructure type projects it is highly recommended to use the Montana Public Works Standard Specifications ([April 2021, 7th Edition](#)) and the Engineers Joint Contract Documents Committee ([EJCDC](#)) to complete the Plans and Specifications/Project Manual.

Federal: Sealed Bids [2 CFR 200.320\(b\)\(1\)](#). Bonding requirements, [2 CFR 200.326](#). Contract provisions, [2 CFR 200.327](#). See the Uniform Specification Supplements Section 00900 on the [W2ASACT](#) page for required special provisions.

- ✓ Are ARPA funded water and sewer infrastructure projects required to pay **Davis Bacon Wages**? Maybe [US Treasury Final Rule FAQ](#)
- ✓ Are ARPA funded water and sewer infrastructure projects subject to **Buy America Build America (BABA)** requirements? No [US Treasury Final Rule FAQ](#)
- ✓ Are APRA funded water and sewer infrastructure projects subject to the **State of Montana Prevailing Wage requirements**? Yes [US Treasury Final Rule FAQ](#)

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State: A licensed engineer or surveyor registered in Montana must be present for inspection and completion of the project ([MCA 18-2-121](#)). Inspection does not need to be full time but is required during key milestones of construction. Examples: checking grade before and inspection during liner installation, forming, rebar placement and concrete pours, riprap placement, pipeline inspection before burial, final walkthrough, etc.

Invitation for Bids (IFB) [MCA 18-4-303](#) establishes requirements for Competitive Sealed Bidding including public notice, review and inspection, awards and preference. If an award is made, it must be made with reasonable promptness by written notice to the lowest responsible, qualified, and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, including the preferences established by [MCA 18-1-102](#). Construction Contract Indemnification Provisions, [MCA 18-2-124](#).

Construction Options

IFB Contractor AND Materials: A selected contractor is hired by competitive bidding and procures the materials for the project and constructs the project according to approved plans and specifications.

- Benefits include contractor warranty on construction and materials.
- Competitive Sealed Bidding ([MCA 18-4-303](#)) or Sealed Bids [2 CFR 200.320\(b\)\(1\)](#).
- A licensed engineer or surveyor registered in Montana must be present for inspection and completion of the project ([MCA 18-2-121](#)).
- DNRC requires As-Builts that are certified by a licensed P.E. as part of the Final Reporting Requirements.

IFB Separate Contractor and Materials. Local governments may procure materials and a construction contractor separately to address supply chain issues. The local government must request approval to purchase materials separately from a construction or contractor invitation for bid.

- The project cannot be broken into parts to avoid procurement requirements, therefore total cost of contracted construction and materials for a project governs the procurement strategy.
- Competitive Sealed Bidding ([MCA 18-4-303](#)) or Sealed Bids [2 CFR 200.320\(b\)\(1\)](#).
- A licensed engineer or surveyor registered in Montana must be present for inspection and completion of the project ([MCA 18-2-121](#)).
- DNRC requires As-Builts that are certified by a licensed P.E. as part of the Final Reporting Requirements.

Local Government Provides Labor and Equipment for Construction. Local governments must request authorization to use their own labor and equipment for construction projects. Common types of these projects are canal/ditch conversion to pipe and canal lining.

- Procurement of materials must follow federal, state and/or local procurement laws, rules, and regulations.
- The entity must provide DNRC with documentation of similar projects constructed or must provide DNRC with the manpower and machinery available to complete the construction according to plans and specifications.

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- Accurate expense records of labor and machinery used for construction must be kept and provided to DNRC for reimbursement.
- A licensed engineer or surveyor registered in Montana must be present for inspection and completion of the project ([MCA 18-2-121](#)).
- DNRC requires As-Builts that are certified by a licensed P.E. as part of the Final Reporting Requirements.

Please consult your legal counsel regarding procurement standards to hire an engineer, purchase goods or services and bid construction projects. For questions regarding grant agreement requirements, please contact your DNRC grant manager.